

3-26627

ORATION

DELIVERED BY

HON. JOHN RANDOLPH TUCKER, LL. D.

OF VIRGINIA,

APRIL 7, 1888,

AT THE

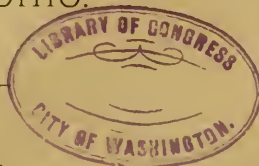
CELEBRATION OF THE CENTENNIAL

OF THE

FOUNDING OF THE NORTHWEST

AT

MARIETTA, OHIO.



COLUMBUS, O.:

OHIO ARCHÆOLOGICAL AND HISTORICAL SOCIETY.
1888.

PRESS OF HANN & ADAIR.

F.196
.T89

3-20627

ORATION OF HON. JOHN RANDOLPH
TUCKER, LL. D.

The last decades of our century bristle with centennial anniversaries; the landmarks of human progress in the free institutions of a Christian civilization.

The Old World, with its crowded populations, with its social orders and castes, and its despotic forms of government was stagnant and unhealthful. Commerce reached forth its bold and eager arms for new fields for human enterprise and a larger and freer civilization.

Motives of gain mingled with religious fervor to plant the standard of European polity and the emblem of the cross on the soil of a new world.

We are near the anniversary of that great 1492, which turned the world upside down and doubled the domain of civilized life among men. Columbia opened her doors to European emigration. The glitter of the precious metals first fascinated the vulgar; but now millions of men with teeming golden harvests, and with fields white with their myriad bales of cotton, and with minerals and forests for light, heat and all the arts of life, feed a hungry, clothe a naked, and house a homeless world.

Three centuries ago the Spanish Armada sank under the storm of God into the British waters in sight of the reefs of Albion; and left England mistress of the seas.

In 1584 Edmund Spenser dedicated the "Faerie Queen" to "Elizabeth, by the grace of God Queen of England, France, and Ireland and Virginia;" and in the same year the Virgin Queen gave to Sir Walter Raleigh the charter to take and possess Virginia in her royal name. Virginia was rocked in her infant cradle to the sweet song of the master of English poetry.

But it was reserved for another reign to plant an English colony securely on American soil. During the memorable seventeenth century, when the conflict of prerogative and

liberty convulsed our mother country, in the month of May, 1607, when our tide-water region is fragrant with flowers and is clad in all the beauties of the opening spring, a few vessels came to anchor in Powhatan River, and a few hundred English colonists planted the first seeds of British civilization at Jamestown. Here on the banks of our Nile rested the ark of American institutions.

A few years later, in December, 1620, the pilgrim fathers landed at Plymouth Rock, and raised the standard of civil polity based on popular compact.

These Colonists brought with them the spirit of British freedom, exalted in its courage by the bold temper which inspires and is enhanced by adventurous enterprise.

A new continent, without fixed institutions, without king, nobility, or ecclesiastical authority, was opened to the fresh impress of the sons of civilized life, who landed upon its shores. All the bands of the old and established society of the mother country were loosened, and the colonial mind, free from the environment of ancient prejudices, was prepared for an order of things more natural, and, therefore, more true. The scion of the ancient tree of liberty could better grow unchoked by the weeds of privilege and prerogative in the soil, and drinking in the balmy air of this virgin continent.

As Lord Bacon has it, "No tree is so good first set as by transplanting." Young and bold men—men tired of old habits, customs, and thoughts, yearning to throw off the restraints of an ancient and effete social order (as a religious reformation had shaken the foundations of the ancient Church), and to find full scope for the enterprises of life, and to impress themselves upon a new and unformed empire—these were the colonists that braved the rock-bound coasts of New England, and plunged into the untrodden wilderness of tide-water Virginia. They panted to be free, and could not be enslaved. They brought with them also a clear comprehension and vigorous grasp

of all the fundamental principles of liberty imbedded in Magna Charta.

These were asserted with emphatic distinctness in their public acts. As early as 1623, the House of Burgesses of Virginia enacted that no tax could be laid on any colonist but by the vote of the General Assembly. In 1636, the year of John Hampden and Ship-money, the Massachusetts colony made a similar declaration; and other colonies followed.

In 1651, when the fleet of the English Parliament invaded the waters of the Chesapeake, a treaty was made between the Commonwealth of England and the colony of Virginia, which is one of the most striking of the historic memorials of the colonial period.

It provides for the obedience of the colony to the Commonwealth of England, but that "this submission and subscription be acknowledged as a voluntary act, not forced nor constrained by a conquest upon the country."

It declares that Virginia shall be free from all taxes, customs, and impositions whatsoever, and none to be imposed on them without consent of the Grand Assembly, and so that neither forts nor castles be erected or garrisons maintained without their consent." Thus by treaty stipulations in 1651, Virginia established the great principle on which the American Revolution was based — that taxation by any other than the representatives of the tax-paying people was unlawful and contrary to liberty.

I present this action of Virginia and Massachusetts especially to you, because the men who settled here a century ago were the sons of New England, and planted their feet upon the soil which Virginia gave to the Union. The principles of freedom I have stated were the inheritance of Putnam and his followers, and were the fixed law of the land of Virginia on which they made their homes. When, therefore, in May, 1764, Samuel Adams and his co-patriots, and in May, 1765, Patrick Henry and his associates had denounced taxation without representation as tyranny

and against law, they but reasserted a principle as old as Magna Charta and the precious corner-stone of every colonial government. It was the canon of the settlement of 1688, two centuries ago in England, as a result of the struggle between the people and the House of Stuart, culminating in the constitutional monarchy under William and Mary.

Mark the epochs of the centuries: America discovered in 1492; Virginia's birth-song written by Spenser in 1584, the prelude to English colonization in America; the English Constitution established in 1688; our own in 1788; and we to-day celebrate them all on the natal day of the inheritance of the Northwest, under the donation of the Old Dominion, by the Pilgrim pioneers from New England. The pendulum of history swings in centuries—in the slow but sure progress of the human race to a higher and nobler civilization.

When the British Government asserted, in the Grenville act, the power to tax the colonies, it made a fatal issue with them upon a principle which was too sacred and fundamental to be surrendered; and a conflict of arms was inevitable. When power invades liberty, resistance to the wrong is a duty to God, and the forces of government must be challenged by the people with all the armed force they can command. The special matter of taxation was the occasion of revolution, but the time had come when taxation by a foreign power was regarded only as a symptom of a more general and chronic disease—namely, the subjection of the welfare of any people to the will and control of another nation.

Self-government—independence of alien control in all things—was the need of the American colonies, which was illustrated in the matter of taxation, but which was equally important in all their relations, domestic and foreign.

No people can be governed by another, alien in sympathy and with no community of interest, without misgov-

ernment and tyranny. Hence the view of the statesmen of the period broadened into a deep conviction, that longer dependence on the British crown was virtual servitude, and that independence was essential to liberty, development and progress.

The Continental Congress of thirteen colonies met September 5, 1774. Two years of futile efforts to patch up the breach which tyranny had made in public confidence and in popular affection passed away, and the declaration of complete and final separation was unitedly made on the famous 4th of July, 1776. The loose and inorganic league between the colonies represented by Congress, whose powers were held under a tenancy at the will of each colony, made its efforts to conduct the war pitifully inefficient — and they would have resulted in failure but for the impulses of popular patriotism; the masterful genius of a majestic leader — that hero of equal mind in the shock of defeat as amid the shouts of victory, — and the generous co-operation of a great and noble ally. Congress proposed in 1777 to the colonies a plan of organic union under the articles of confederation, which, however, were never adopted by all the States until March 1, 1781, and by their express terms were wholly inoperative until all had consented to them.

A brief view of the colonial condition is now necessary, as well to appreciate the obstacles to this organic union as to show the relation of all these historic references to the event we celebrate to-day.

Prior to the seven years' war between Great Britain and France, which ended in 1763, the three powers of Great Britain, France and Spain held possession of all the territory now included in the United States and Canada.

France owned Canada and Louisiana, which covered a claim to the region west of the Mississippi to the Pacific. Spain owned Florida; and Great Britain held the whole region to the Mississippi, and with a claim beyond to the Pacific, which conflicted with that of France.

By the treaty of Paris, in 1763, between Great Britain, France, and Spain, France ceded Canada, and Spain ceded Florida to Great Britain; and the boundary fixed between Great Britain and France was the Mississippi River, *ad filum aquæ*, from its source to the Iberville, thence through that river and the lakes of Maurepas and Pontchartrain to the sea.

The effect of this treaty upon colonial rights, especially in Virginia, can now be readily understood.

By the charters to Virginia of 1606, 1609 and 1611, she claimed from Point Comfort two hundred miles north, which would bring it to about the fortieth parallel, and the same distance south upon the Atlantic coast, and backward, west and northwest to the sea—that is, the Pacific.

By the treaty of 1651 between the Commonwealth of England and Virginia, already referred to, it is provided “that Virginia shall have and enjoy the ancient bounds and limits granted by the charters of the former King.” The terms “West and Northwest” were always held to include beyond the fortieth parallel, and to embrace Michigan, Wisconsin, and all the portions of Ohio, Indiana and Illinois north of that parallel.

These bounds and limits, fixed by the three charters and confirmed by the treaty with the Commonwealth of England, made Virginia, in the extent of her domain, an empire in herself. But the treaty of Paris (1763) made her western boundary the middle of the Mississippi down to $36^{\circ} 30'$, her southern parallel, after the grant to the Carolinas had been made, which she recognized and ceded by her constitution of June 29, 1776.

When by that constitution, on the 29th of June, 1776, Virginia assumed to be a free and independent State, she rightfully asserted her jurisdictional claim to the boundaries fixed by the charters and modified by the treaty of Paris of 1763.

This splendid domain, which embraces what are now

eight States of the Union, containing 350,000 square miles, with a present population of 15,000,000, was the rightful empire of Virginia with which she entered the league of 1774 and the confederation of 1781.

I am aware that questions were made as to the title of Virginia to this domain; but they originated in a natural jealousy of her stake in the success of the revolution and of her preponderant power in the counsels of the Union, had she retained it.

But all question of her title was at rest when, with just and magnanimous hand, she gave to all an equal share with herself in this inheritance which was all her own. Jealousy was suppressed and the cavils of her rivals were silenced when, with a self-abnegation as rare as it was noble, she surrendered all to the Union and afterwards sealed the Ordinance of 1787, which excluded her own people with their slaves from the territory she gave for the benefit of others.

Much was said at one time as to the title claimed by some parties and companies and even States under purchase from the Indians. That pretension never availed at any time, but met with signal condemnation in the masterly and unanimous judgment of the Supreme Court in *Johnson vs. McIntosh*, (8th Wheaton, 543,) where it is established as a part of the American polity, that the European race by discovery and conquest hold the pre-eminent right of pre-emption of the Indian title, which excludes the right of any one, without the consent of the sovereign power, to gain any title from the Indians as against the sovereign of the territory.

But the title of Virginia stands on a higher ground than her chartered grant. Her statesmanship conceived what her military genius achieved, the conquest of the territory for herself in order that with free hand and heart she might give it to the Union.

Some time after the treaty of Paris (1763), France ceded Louisiana to Spain, and thus placed Spain in the posses-

sion of the mouths of the Mississippi River, and of the west bank of that river to the middle thereof in its whole length, with a claim by Spain (never sound under international law) thereby to shut this outlet to the Gulf against all the people inhabiting the country on its east bank, and on its northern tributaries, the Ohio River and others.

The obstruction of the Allegheny mountains to commerce between the Western territory and the Atlantic seaboard, with only the natural outlet of the Mississippi for the products of the Western settlements, made this claim of occlusion of the Mississippi by a European power one of the gravest questions for American statesmanship at that period; and Virginia, with her claim to the Mississippi River, including Kentucky south of the Ohio River and this Northwestern Territory north of that river, saw very clearly its importance, and therefore urged with persistent vigor the recognition of the free navigation of the Mississippi to the public seas. One other view of the situation is most important. If the United States could not secure to the Western people a free Mississippi navigation, the temptation of private interest might seduce the people of the West to abandon their Eastern allies, and seek the protection of that European power which could open the Mississippi to their commerce—a suggestion which threatened the Union itself. Spain had, early in the Revolution, declined to join France in aiding the American colonies, and urged, as a precondition to joining any alliance with the United States, that the latter should renounce the free navigation of the Mississippi, and limit their western boundary to the Allegheny mountains. Virginia instructed her delegates in Congress, in November, 1779, to obtain in the then pending negotiations with Spain the free navigation of the Mississippi to the seas, with easements on the shore and at the mouth for the Western commerce. This condition of affairs will explain the pre-

vious sagacious action of Virginia, to which I will now call attention.

George Rogers Clarke was born near Monticello, Albemarle county, Va., in 1752. With slight education (as appears from his letters), he became a practical surveyor, and after campaigning a short time against the Indians in Virginia, he went to Kentucky in 1775, from which he, as its delegate, came to the convention of Virginia, at Williamsburg, in 1776, and urged upon the authorities the creation of the new county of Kentucky and a supply of ammunition for its defense. "A country not worth defending is not worth claiming," was his laconic appeal.

Patrick Henry, the first Governor of Virginia, as sagacious and prophetic as a statesman as he was a master of eloquence, seconded his plans; and Clarke started back with five hundred pounds of powder, which he carried by land to the Monongahela, and thence to a point near Maysville, Ky. He repelled the Indians from that vicinity, and sent spies into Illinois, and on their return early in 1777 hastened back to Virginia to lay his plans before the authorities for the conquest of Illinois.

An act was passed authorizing the Governor and Council to organize an expedition "to march and attack any of our Western enemies." (9 Henn. Stat., 375.)

Governor Henry placed a band of a few hundred men under this dauntless projector of the enterprise. With it he crossed the Allegheny and descended the Ohio in frail boats to Corn Island, near Louisville, where he erected block houses, drilled his men and planted corn. On the 24th of June, 1778, while the sun was in eclipse, he went down the river, landed at the old Fort Massac, marched six days across the wilderness and appeared before Kaskaskia, and took it on the 4th of July, 1778; and then pushed on and captured all the other British posts on the river. And thus by a blow, without serious loss, he planted the standard of American authority on the bank of the great Father of Waters.

The English Governor, Hamilton, at Detroit, was alarmed, and on December 16, 1778, retook Vincennes on the Wabash. Clarke accepted the issue thus tendered in brief words: "I must take Hamilton or he will take me."

With about 170 ragged, but brave heroes, he, in mid-winter, crossed the country with scanty food supplies, waded rivers, and appeared with his unerring rifles before Vincennes, and on the 24th of February, 1779, captured the governor and garrison. In the meantime, by act of her Assembly, Virginia had organized the county of Illinois, embracing all the territory between the Ohio and Mississippi Rivers, which included this city of Marietta, (9 Hen., St. at Large, 552). A resolution was passed thanking Lieutenant Colonel George Rogers Clarke and his body of Virginia militia for reducing "the British posts in the western part of this Commonwealth on the River Mississippi and its branches; whereby great advantages may accrue to the common cause of America, as well as to this Commonwealth."

This romantic chapter in the revolutionary war I present not only for its historic interest, but because it settled the question of our Western boundary; and pushed it beyond the Alleghenies to the Mississippi river." All glory to the Virginia militia and the military genius of their heroic leader, who, under direction of Virginia statesmanship, broke the machinations of a diplomacy which would have made your anniversary impossible, and given up the valley of the Mississippi to a European power!

I am tempted to give you a letter written by this remarkable man to the Governor of Virginia from Kaskaskia on the 3d of February, 1779, when he had determined on this last adventurous enterprise. Its orthography is defective, but he made his mark! in deeds, not words.

After describing the attack on St. Vincent "by the famous Hair Buyer, General Henry Hamilton, Esq., Lieutenant Governor of Detroit," he says that he had "every peace of intelligence" he desired from a Spanish gentle-

man who had "escaped from Mr. Hamilton." And then, after stating the forces and the cannon and so forth, that Hamilton had, he quaintly adds, "has no suspicion of a Visit from the americans — this was Mr. Hamilton's circumstances when Mr. Vigo left him." He says that having no expectation of any reinforcements, "I shall be obliged to give up the country to Mr. Hamilton without a turn of fortune in my favor;" and then adds, "I am resolved to take advantage of his present situation and risque the whole in a single battle! I shall set out in a few days with all the force I can raise," "amounting on the whole to only one hundred and seventy men," a part of whom were to go "on board a small galley, which is to take her station ten leagues below St. Vincent. If I am defeated, she is to join Colonel Rogers on the Mississippi." "I shall march across by land myself, with the rest of my boys; the principal persons that follow me on this forlorn hope is Captains Jos. Bowman, John Williams, Edward Worthing, Richard McCarty and Francis Charlovielle, Lts. Richard Brashear, William Kellar, Abm. Chaplin, John Jerault and John Bayley, and several other brave subalterns. You must be sensible of the feeling that I have for those brave officers and soldiers that are determined to share my fate, let it be what it will. I know the case is desperate; but, sir, we must either quit the country or attack Mr. Hamilton. No time is to be lost. If I was short of reinforcements I should not attempt it. Who knows what fortune will do for us? Great things have been effected by a few men well conducted. Perhaps we may be fortunate. We have this consolation, that our cause is just, and that our country will be grateful, and not condemn our conduct in case we fall through; if so, this country, as well as Kentucky, is lost."

Can we wonder that, in the lexicon of that youth of twenty-six years — this Hannibal of the West, as John Randolph called him, — there was no such word as fail! And that because he did not, we are here to-day to cele-

brate the settlement, one hundred years ago, upon this soil, a part of that county of Illinois rescued forever from British control by the gallant men whom Clarke led to victory in 1779!

But at that moment the organic Union was not yet formed. Some of the States insisted, and Maryland most obdurately, that all the States should make cessions of their territory to the Union. And there were many acts of an inimical character done by Congress and some of the States to the title and claim of Virginia. Some of these were based on the counter claims of States under purchase from the Indian nations, and some by certain corporations under like purchases. It would be useless to revive the memory or to discuss the merits of these claims.

In September (6), 1780, Congress recommended to the several States to make liberal cessions to the United States of a portion of their claims for the common benefit of the Union. In response to this, the States made cessions; and Virginia, on the 2d of January, 1781, did yield "all right, title and claim which the said Commonwealth had to the territory northwest of the river of Ohio," subject to certain conditions. The State of Maryland, which had delayed until this was done to agree to the articles, now acceded to the articles of confederation, March 1, 1781, and thus the organic Union of the thirteen States was for the first time established.

A long and angry conflict of opinion continued in Congress for several years as to the acceptance of the proposed cession of Virginia, in which a jealous doubt of her claim was manifested, but on which she stoutly and indignantly insisted. A reference to these is unnecessary.

The ground of objection to her title seems, as I have already said, to have been judicially settled by the judgment in *Johnson vs. McIntosh* (8th Wheaton) by a unanimous court. Finally, on the 13th of September, 1783, a report was adopted in Congress to accept the cession of

Virginia upon six conditions named by her in the original proposal of January 2, 1781, two of her conditions being declared to be unnecessary.

Accordingly, Virginia, by an act passed December 20, 1783, agreed to cede her territory upon the conditions indicated by Congress, and authorized her delegates to execute a deed for the same to the United States.

Finally, upon the 1st of March, 1784, Virginia, by her delegates in Congress, tendered her deed of cession according to the said act of December 20, 1783. In opposition a petition of Colonel George Morgan, agent for New Jersey, and on behalf of the Indiana Company, was presented. A motion to refer it was lost, as also a motion to appoint a court to determine the respective rights of said company and of Virginia.

Congress then, by solemn vote, agreed to accept the deed, which was on the said 1st of March, 1784, executed, delivered and filed, signed by Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, the delegates of Virginia.

The conditions imposed in this cession were that States (not less than 100, nor more than 150 miles square) should be formed out of the territory, which should be distinct republican States, "having the same rights of sovereignty, freedom and independence as the other States," and to be "admitted members of the Federal Union;" that the expenses of Virginia in subduing British posts and for the defense or in acquiring any part of said territory should be reimbursed by the United States; that the citizens of Virginia in Kaskaskia, St. Vincent and other places be confirmed in their titles; that 150,000 acres be granted George Rogers Clarke and his men who marched with him to reduce Kaskaskia and St. Vincent; that so much land be allowed between the Scioto and Miami Rivers for Virginia troops as shall be sufficient for the purpose, and that all other lands in the territory be "considered a common fund for the use and benefit of such of the United

States as have become or shall become members of the Confederation or Federal alliance of said States, Virginia inclusive, according to their respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever.”¹

By the treaty of peace, 1783, Florida was ceded by Great Britain to Spain, and France having previously ceded Louisiana to Spain, the latter power owned both banks of the Mississippi at its mouth, and the free navigation of the Mississippi became a grave question for our infant diplomacy. If the occlusion of the Mississippi by Spain was submitted to, the Western country would have been shut in by the Allegheny range from the Atlantic seaboard, and from the sea by Spain, with the key to the Gulf in her hands.

I remember when a young man, before the Allegheny mountains were tunneled for railways, that the difference between the price of flour at Baltimore and Wheeling was two dollars, and that as you descended the Ohio River the difference decreased. That is, the free navigation of the Mississippi, the outlet for the West, was its best hope to reach the markets of the world. What a hopeless condition, had the door to the outer world been locked by an alien power!

I can say, with pride in the statesmen of Virginia, fortified by the generous tribute of Senator Hoar in his oration this morning, that they led persistently in the demand for a free Mississippi. Other States seemed at times to think their commercial interests might be benefited by shutting the Mississippi, and obtaining a monopoly of Western trade through their territories to the Atlantic. But all such thoughts finally gave way to the resolutions of Congress, September 16, 1786, “that the free navigation of the River Mississippi is a clear and essen-

¹ A very full history of these matters may be found in Report 457 to the House of Representatives, the first session of the Twenty-eighth Congress.

tial right of the United States, and that the same ought to be considered and supported as such."

Despite the cession of Louisiana to France by Spain in 1801, American statesmanship triumphed in the assurance of free access to the markets of the world through that great estuary by the splendid acquisition of Louisiana under the administration of Mr. Jefferson.

And so, from the day that the mountain heights of Monticello stood as sentinel guards over the cradled infancy of George Rogers Clarke and Thomas Jefferson, Providence had decreed that the one should conquer by prowess in arms, and the other by a wise diplomacy, the open water highway for the products of the West to the markets of the world.

Nor is this all that I claim for the State which gave this territory, where, one hundred years ago, your Pilgrim fathers founded the seat of Northwestern civilization.

In 1784 I find that Virginia, by an act of her Assembly, granted to James Rumsey, of Shepherdstown (now in West Virginia), the exclusive right to navigate her rivers by boats constructed to move up stream. James Rumsey built a boat which moved up stream by the power of steam before 1790. And the young feet of my venerable mother trod the deck of that wrecked and rude barge before the year of 1800.

It is a matter of deep interest, further, to read the letters of George Washington and his cotemporaries in this decade a century ago, urging the water lines to the eastern base of our mountain ranges, and up the waters of the Potomac and the James; that thus they might approximate the navigable waters on the western slope, and bring by waterways the products of the West to our Eastern ports. The idea was in their prophetic minds. Its realization awaited the inventive genius of those who have made ironways a substitute for water, and who make the prediction true, that every valley shall be filled and every moun-

tain be laid low, for the march of man to his highest destiny under the Providence and blessing of God.

The title and security of the domain for American colonization having been thus placed by the donation of Virginia under the charge of the organic Union, formed by the Articles of Confederation, the materialistic view of the question may be dismissed.

The question remaining for Congress was the settlement and government of the territory. As early as June 5, 1783, and before the final acceptance by Congress of the deed from Virginia, Theoderick Bland, seconded by Alexander Hamilton, proposed an ordinance in Congress for the regulation of the territory ceded by Virginia; it was referred to a committee, but was not acted on. On the day the deed was executed by Virginia, March 1, 1784, Mr. Jefferson reported from a committee a plan for the government of all the Western Territory from the southern boundary of the United States at 31° latitude, to the Lake of the Woods. This ordinance, in Jefferson's handwriting, provided for a temporary government until the population increased to 20,000 inhabitants, when they might institute a permanent government with a member in Congress to debate, but not to vote. And when the population increased to that of the least populous State of the Union, then to be admitted into the Union.

Five articles were added:

First—The new States to remain forever as members of the Union.

Second—To have the same relation to the Union as the original States.

Third—To bear their proportion of burdens.

Fourth—To have republican forms of government.

Fifth—Slavery shall not exist in said Territories after 1800.

This did not abolish slavery, but forbade its existence prospectively, and had it been adopted would have forbid-

den it beyond a north and south line running along the the western boundaries of the then States of the Union.

This fifth article was struck out of the report because not adopted by Congress, the vote being six States for it and three against it, one State not voting, and one divided. The ordinance was then adopted, with the exception of that article, and continued in force for about three years.

Meantime the movement for a Federal Convention, to revise the articles of confederation, resulted in its meeting in May, 1787, in Philadelphia. During the session of that Convention, Congress had under consideration the ordinance for the government of the Northwestern territory. A company called the Ohio Company had been organized upon a plan projected in Massachusetts by a number of resolute men (many of whom had been heroes of the Revolution) as early as March, 1786. Rufus Putnam, Winthrop Sargent, Manasseh Cutler, John Brooks, and Benj. Tupper were principals in the movement. In March, 1787, a meeting of the subscribers was held in Boston, and Putnam, Cutler, and Samuel Holden Parsons were elected directors to apply to Congress for a purchase of land in the Northwest.

It is of interest to state that Washington warmly seconded the movement of Putnam and others, who were his trusted associates in the army, and that La Fayette spoke of them and their plans with French enthusiasm.

On the day, May 9, 1787, the ordinance for the Northwest territory was ordered to its third reading, Parsons presented the memorial of the Ohio Company. It was referred to a committee composed of Edward Carrington, Virginia; Rufus King and Nathan Dane, Massachusetts; Madison, Virginia, and Benson, New York. Cutler arrived on July 5, and placed himself in immediate communication with Carrington, chairman of the committee. A report was made on July 10, allowing the purchase by the company.

The ordinance for the government of the Territory was referred to a new committee—Edward Carrington, of Virginia, as chairman, Nathan Dane and others. This ordinance in its new form, and without any clause as to slavery, was reported on the 11th of July, 1787, and Congress proceeded to consider it. On its second reading, Dane (Mr. Bancroft thinks at the instance of Grayson, of Virginia, and others) moved the clause forbidding slavery and providing for the surrender of fugitive slaves, which was adopted by the votes of Georgia, South Carolina, North Carolina, Virginia, Delaware, New Jersey, New York and Massachusetts—all the States then present—Pennsylvania, New Hampshire, Connecticut, Rhode Island and Maryland absent. There was but one member—Mr. Yates, of New York—who voted in the negative. Immediately thereafter the purchase by the Ohio Company was perfected. Thus the ordinance to govern the Territory and the scheme for its colonization at this place were almost contemporaneous, and stood related as cause and result.

Of that celebrated Ordinance of July 13, 1787, some observations are appropriate to this occasion.

The ordinance may be summarized thus:

1. Equality of heirship to a decedent between his children and kindred of both sexes. This was according, as well to Massachusetts law, as to that of Virginia in her legislation under the lead of Jefferson in 1776-7, but there was a saving to the citizens of Virginia in Illinois of their laws and customs relative to this matter.

2. A government was provided of Governor, Secretary, and Judges, to be appointed by Congress, with power to adopt such laws of the original States as may be necessary and best suited to the circumstances, subject to the approval of Congress.

3. When there shall be five thousand free male inhabitants, a Legislature is authorized. The Legislature is to be composed of Governor, Legislative Council, and Assembly.

4. The legislative power is limited by the provisions and principles declared in the ordinance.

5. As fundamental articles of compact between the original States and the people and States in said territory, unalterable but by common consent, six were ordained in substance as follows:

First—Religious freedom, and civil rights not to be dependent on religious belief; a principle embodied in Jefferson's immortal act for religious freedom, passed in Virginia on the 16th of December, 1785; and engraven on his tomb, by his direction, as one of his three titles to the remembrance of mankind.

Second—Habeas corpus and jury trial, proportionate representation in the Legislature, and judicial procedure according to the common law; deprivation of life, property or liberty only by the judgment of peers or law of the land; just compensation to be allowed for private property taken for public use; and no power by law to interfere with or affect private contracts.

Third—As religion, morality and knowledge are necessary for good government and the happiness of mankind, schools shall be encouraged. Good faith to the Indians is enjoined, and legal protection to them and their rights.

Fourth—The States formed from said Territory to remain forever a part of this Confederacy of the United States of America—to bear their proper share of public burdens—to lay no tax on the lands of the Union, nor interfere with the disposal of the soil of the United States, and the navigable rivers leading into the Mississippi and St. Lawrence to be common highways, forever free to all the people of all the States.

Fifth—Three at least, at most five, States to be formed out of the Territory, as "soon as Virginia shall alter her act of cession and consent to the same"—and each of them to be admitted when it shall have sixty thousand free inhabitants, on an equal footing with the original

States in all respects whatever, provided its Constitution be republican and consistent with the ordinance.

Sixth—"There shall be neither slavery nor involuntary servitude in the said territory otherwise than in the punishment of crimes whereof the party shall have been duly convicted; *provided always*, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."

This ordinance, which for the validity of the fifth article was in its terms conditioned on the consent of the grantor, Virginia—and upon that of no other State—was a clear and complete recognition by Congress of the justice of the title of Virginia, and her supreme right to insist on the original conditions in her grant, unless she waived them.

And the terms of this fifth article described the territory as to which Virginia's consent was asked, as extending from the Ohio to the northern boundary between the United States and Canada, thus embracing what is now Ohio, Indiana, Illinois, Wisconsin and Michigan. And this was done by the votes of Massachusetts, New Jersey and New York, the only States who had ever contested the claim of Virginia previously. This is a virtual estoppel of all the States to a denial of Virginia's claim. Accordingly, Virginia, by her act passed December 30, 1788, declared her assent to and ratification and confirmation of "the said article" (being the fifth) "of compact between the original States and the people and States in the said territory."

I am free to say that in my judgment not only that act ratified and confirmed the fifth article as to the number of the States to be formed out of the territory, but by confirming it as "an article of compact between the original States and the people and States in said territory"—of which compact Article Sixth, forbidding slavery, was a part—she must be deemed to have consented to the exclusion

of slavery from the territory she had previously granted to the Union.

She could have done it herself before her grant. And when her grantee did it with her privity and by her vote in Congress, and she consented to another article of a compact without dissent from this anti-slavery clause, she must be held to have assented to the latter, and is estopped to dissent thereafter. Nor was such exclusion contrary to her well-defined policy. She had, in her colonial history, protested against the slave trade, and, in the preamble to her constitution of June 29, 1776, written by Mr. Jefferson, had, in nervous and emphatic terms, arraigned George III for "prompting our negroes to rise in arms among us, those very negroes, whom by an inhuman use of his negative, he hath refused us permission to exclude by law." And in the following month (August 25, 1787), in the Federal convention, after her son George Mason had denounced it as "this infernal traffic," she voted to put an end to the slave trade in 1800, which was postponed to 1808 by the votes of the New England States (New Hampshire, Massachusetts and Connecticut), and Maryland, North and South Carolina and Georgia.

And while she voted against the Jefferson clause in 1784, which forbade the extension of slavery into the territory south as well as north of the Ohio River, she was willing, from climatic as well as other reasons, to forbid its extension into the territory north of that river.

And now the domain for free colonization under law, and with the inspiration of religion and education, is ready for the adventurous emigrants. The Old Dominion has granted it—the Union has accepted it—and the sturdy sons of Massachusetts, under Rufus Putnam, with her polity, civil and religious, braving the wilderness and the winter, land and plant their feet upon the spot where we stand to-day. Six States only on the 7th of April, 1788, had ratified the new Federal Constitution proposed by the Federal Convention, September 17, 1787. You took pos-

session under the Articles of Confederation; you hold now under the Constitution of 1789. You pioneered the Northwest, and others followed. The forty-eight immortals at Marietta a century ago are succeeded by fifteen millions of people from every section of the Union in the Territory covered by the Ordinance of 1787. The poverty of the unsheltered and hungry group of that day must be honored in the memories of that mighty mass of millions who now fill the land, they took into possession, with palaces and institutions of learning; with churches of the ever-living God; with teeming harvests of the earth and mines of inestimable wealth, and factories filled with the busy hum of manual industry; and above all, with the intelligent love of liberty and law and religion under the Constitution of our fathers, to be consecrated by our devoted lives and defended to the death against all who would prostitute its sacred provisions to the purposes of private gain, to the behests of ignoble factions or for the promotion of base and selfish ambition.

For to you and to me, and to all within the broad limits of this great Union, the inheritors of the constitutional liberties of our fathers, come the solemn questions to-day: What will we do with it? Shall we waste or save our heritage? Shall the motive influence of our life be the mere expansion of national power, and the accretion of national wealth? and shall we pervert all we have inherited or acquired to an effeminate luxury, to a sordid ambition for riches or power, or to the destruction of our free institutions? Let us rather take our inspirations from the hardy, simple, heroic and devoted men who, fearing God feared nothing else; who erected here and everywhere in our land altars to the true God, founded schools for their children, established institutions of law and liberty, and consecrated homes of economy and industry, of a pure morality, of genuine and exalted piety.

Our duty is plain, as our danger is great. Our danger is in one word, irreverence—irreverence to the simple vir-

tues and exalted honor of our fathers, irreverence to God, irreverence to the constitution ordained by them under the Divine guidance, and in the conservation of which we have become a mighty power on the earth. Our duty is veneration for all that is noble and great and pure, for God and His religion, for our fathers, who, in sincere and simple faith, feared nothing but to do wrong by disobedience to the Divine commands. And what we specially need, as citizens of this great Republic of republics, is to study with earnest diligence the principles of our free institutions; to hold him an enemy of the country who derides fidelity to the Constitution, and trifles with his solemn obligation to uphold it; who would use the power of the government to promote personal or party ends; who stirs up the bitterness of buried strifes, and engenders sectional or class conflicts among the people of the Union; and who does not hold it to be his best and noblest civil duty to uphold and defend the Constitution in all its integrity against all the temptations to its violation by the corrupting influences which surround us.

The time has come, in this period when centennial anniversaries summon us to look at the genesis of our being as a people, to examine and study the general principles in the development of which a century has passed, and to mark wherein we have departed from the law of our organic life. That law is this: That a written constitution is the supreme law for government and for men, unchangeable by either, except in the mode it has ordained—supreme in the conscience of President, Governor, legislator, judge and citizen—not a constitution of growth and evolution from the exigencies of an advancing civilization, by the sophistries of ingenious men, or in obedience to their caprice or corrupt desires or greedy avarice; not a law one thing to-day, another to-morrow; but, to apply a well known passage: *Omnes gentes et omni tempore, una lex, et sempiterna et immutabilis.*

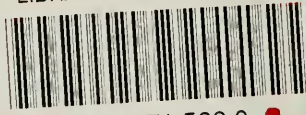
It is to this solemn duty I venture to call the sons of

New England and Virginia, and of all the States, here and elsewhere, now and always. Let the descendants of the sturdy men, who, here and elsewhere, laid this foundation stone—this elect, tried and precious corner stone for our free institutions, the absolute supremacy of a written constitution—bring us back to a higher and more healthful atmosphere of thought and feeling. Let us make this Union so strong under the faithful observance of the Constitution which made and conserves it as our greatest blessing; so strong in the affections and devotion of the people that not only none shall be able to destroy it who would, but that none would do so even if they were able. Believe me, the bond of reverential love is stronger than that of force, and I think the South would say to-day that, though she could not dissolve the Union when she would, she now would not if she could.

The decree has gone forth—THAT THE STATES CANNOT DESTROY THE UNION! AND THE UNION MUST NOT DESTROY THE STATES!

I congratulate the people of Ohio, and especially the descendants of the Pilgrims, whose heroic fortitude planted this colony a century ago, on this auspicious anniversary. Let a review of the past purify and stimulate us to follow the noble example of our ancestors; and, with hearty reverence for the God of our fathers, and veneration for the constitutional work of their hands, may we transmit the inheritance we have received to our posterity, so that, in the centuries to come, and to the remotest generations, this great Federal Constitution may be a light to the world, and secure the blessing of a free and Christian civilization to this American Union of self-governed States forever. To such a union, under such a constitution, let us swear eternal fidelity, and pray, with united hearts, *Esto perpetua!*

LIBRARY OF CONGRESS



0 014 571 566 0 ●